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Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

ROBIN CAUDLE and MICHELLE
CAUDLE, husband and wife,

Plaintiffs,

vs.

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES,
PEAK HEALTH AND WELLNESS
PLLC dba BELGRADE URGENT
CARE, and MARY KAY THURSTON,
F.N.P.,

Defendants.

CV _____

COMPLAINT
[Non-jury on Federal Tort
Claim and Jury Demand on
all other claims]

For their claim against Defendants, Plaintiffs state:

PARTIES

1. Plaintiff, Robin Caudle and Michelle Caudle, husband and wife, are citizens and residents of Gaston, North Carolina.

2. Defendant, United States Department of Health and Human Services, is an agency of the United States Government which operates a "deemed community health center" in Belgrade, Montana, called Community Health Partners, which employs a Physician Assistant named Kendall Parks, PA-C.

3. Peak Health and Wellness PLLC dba Belgrade Urgent Care is a Montana Professional Limited Liability Corporation.

4. Mary Kay Thurston, F.N.P. is an employee of Peak Health and Wellness PLLC dba Belgrade Urgent Care.

JURISDICTION AND VENUE

5. Subject matter jurisdiction of this action against the United States is based upon 28 U.S.C. sections 2675(a) and 1346(b)(1).

6. Plaintiff filed a Standard Form 95, "Claim for Damage, Injury, or Death" with the United States Department of Health and Human Services on or about April 21, 2011 in the amount of \$465,000.00.

7. The United States Department of Health and Human Services notified Plaintiff by letter dated August 23, 2011 that his claim was denied, which was not

acceptable to Plaintiff. The denial letter dated August 23, 2011 also informed Plaintiff that if he was dissatisfied with this determination, he could file a written request for reconsideration within six months or file suit in an appropriate United States District Court not later than six months after the date of mailing of the notification.

8. Plaintiff filed a request for reconsideration with the United States Department of Health and Human Services dated February 12, 2012, which was denied by notice dated March 9, 2012, which constituted notice of final determination on the administrative tort claim as required by 28 U.S.C. §§2401(b), 2675(a).

9. Subject matter jurisdiction of this action against Peak Health and Wellness PLLC dba Belgrade Urgent Care and Mary Kay Thurston, F.N.P. is based upon 28 U.S.C. section 1332, in that this action involves a dispute between citizens of different states and claims in excess of \$75,000.

10. Venue for this action is proper in this District pursuant to 28 U.S.C. section 1391(a).

11. The relevant acts, decisions, and events giving rise to this claim occurred in Belgrade, Montana.

FACTS

12. Robin Caudle presented to Belgrade Urgent Care on 5/1/09 and was seen by Mary Kay Thurston, FNP. He complained of numbness on his right side and noted that he was diagnosed with hypertension two years before. He complained of worsening numbness in his right face, right arm, and right leg. FNP Thurston instructed him to return to the clinic the next day in a fasting state for a lipid profile, CMP [comprehensive metabolic panel] and UA [urinalysis]. He was to have his blood pressure rechecked. She expressed concerns that he may be experiencing some high anxiety levels due to some personal issues in his life.

13. When his symptoms worsened throughout the day, Robin went to the Emergency Room of Bozeman Deaconess Hospital also on 5/1/09. The emergency room physician record indicates that Robin was “complaining of numbness on his right side that he had for five years, but which had gotten worse in the last two weeks. It was usually on his right thigh only, but started in his back, now it was his face and his arm which get weak. He was complaining of numbness around his abdomen.”

14. At Bozeman Deaconess ER Robin was seen by Mark Borke, M.D. who provided aftercare instructions to “1) avoid fatty food 2) recheck fever,

vomiting, severe abdominal pain - or problems using arms or legs”.

15. On 5/5/09 Robin presented to Community Health Partners in Belgrade, Montana and was seen by Kendall Parks, PA-C. Ms. Parks' note of 5/5/09 indicates:

S: patient presents a follow-up from the ER on 05/01/09. She [sic] reports earlier in the day he presented to Bozeman urgent care and then proceeded to go to the ER that night due to RUQ [right upper quadrant] crampy abdominal pain and also some parathesias on the right side of the body. He reports the symptoms last anywhere between 5-10 minutes. They are episodic. Usually the parathesias and the pain coincide. He reports the parathesias as being intermittent, jumping from the arm, leg and sometimes the right side of the tongue and also the torso area. He reports having some subjective weakness in the right arm. Denies any ataxia or aphagia. No mental status changes. Denies any headaches or vision changes. The abdominal pain is somewhat crampy and episodic. It is not related to foods. Denies any nausea, vomiting, diarrhea or constipation. Does have a history of urolithiasis [calculi in the urinary tract, ie kidney stones], however, these symptoms are not consistent with previous episodes. **He is quite worried about a possible stroke. He does have a family history of CVA [cardiovascular accident].** Has not had his cholesterol checked and does not know what his risk factors are for this. The diagnosis from the ER was possible gallbladder pathology. The urgent care was possible anxiety causing the symptoms. He does report a history of elevated BP [blood pressure] and has been elevated for the last year. He has never had any BP medication for this. He denies any chest pains, shortness of breath, hemoptysis or cough.

...

DIAGNOSTIC TESTS: Previous CBC, CMP done in the ER were all WNL. In addition to this we will add a B12 and lipid panel. Patient was fasting today. In addition to this we will order an abdominal ultrasound and possibly a carotid Doppler. I do have a call in to talk to Dr. Schulein concerning patient's symptoms and whether this test is warranted.

ASSESSMENT AND PLAN:

1. RUQ pain with vague diffuse parathesias. We'll get an ultrasound of the RUQ to rule out any gallbladder pathology. Also a carotid Doppler. Symptoms are not consistent with TIAs, however patient is quite concerned and symptoms are quite vague. Again, like I stated above I do have a call in with Dr. Schulein to discuss this case and decide if these tests are needed or any other further testing he would recommend. Follow-up pending results and symptoms.

2. Hypertension. Will start him on _____ (inaudible) 10/12.5 one tab p.o. q.d. Patient is advised of dietary and lifestyle changes that can help with his BP. Also recommended taking an aspirin a day. Meant to get an ECG prior to departure,

this was not done. I will put a call into the patient to see if he can RTC for ECG. Will follow up in a month to evaluate how he is doing on BP, sooner pending symptoms.

16. On 5/6/09 an abdominal ultrasound and a carotid duplex ultrasound were performed at Bozeman Deaconess Hospital as ordered by Kendall Parks, PA-C. The ultrasound was done by a technologist, Melissa Zemlicka, and signed by Rex Spear, M.D. The report indicated that imaging was somewhat limited by the patient's body habitus but indicated no suggestion of significant plaque formation or hemodynamically significant stenosis.

17. The medical records which Plaintiffs have obtained to date do not include any followup records until 5/21/09 when Robin Caudle was admitted to Bozeman Deaconess Hospital through the emergency room after suffering a stroke - "an acute left hemispheric cardiovascular accident".

18. After admission to Bozeman Deaconess Robin Caudle was treated with tPA (Alteplase) and then transported to Billings Clinic Hospital in Billings, Montana where Dr. John Craig performed a left carotid artery thromboembolectomy on 5/27/09.

19. Plaintiff Robin Caudle alleges that Defendant United States Department of Health and Human Services, acting through Community Health Partners and Kendall Parks, PA-C, was negligent in failing to diagnose and take

steps to treat and/or prevent Plaintiff Robin Caudle's impending stroke (cardiovascular accident).

20. Plaintiffs allege that Defendants Belgrade Urgent Care and Mary Kay Thurston, FNP were negligent in failing to diagnose and take steps to treat and/or prevent Plaintiff Robin Caudle's impending stroke (cardiovascular accident).

21. Plaintiffs allege that the negligence of Defendants caused Plaintiff Robin Caudle's injuries and damages.

22. Plaintiff Michelle Caudle has suffered a loss of consortium and companionship, has provided care taking, and her marriage has suffered damage as a result of her husband's injuries.

WHEREFORE, Plaintiffs request judgment in their favor as follows:

1. Plaintiff Robin Caudle requests an award for general and compensatory damages against the United States Department of Health and Human Services on his federal tort claim;

2. Plaintiffs also request an award of general and compensatory damages, and loss of consortium and companionship as a result of Defendants Peak Health and Wellness PLLC dba Belgrade Urgent Care and Mary Kay Thurston, F.N.P.'s negligent acts.

PLAINTIFFS REQUEST A NON-JURY TRIAL ON

THE FEDERAL TORT CLAIM

AND A JURY TRIAL ON ALL OTHER ISSUES SO TRIABLE

DATED this 30th day of April, 2012.

/s/ James G. Edmiston
James G. Edmiston
EDMISTON & COLTON
Attorneys for Plaintiff